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PROGRAM SUPPLIER TESTIMONY RE "WARNER RECORDS" CLAIM

In behalf of the eighty-six (86) MPAA-represented claimants (identified in our Phase II, Exhibit 2), MPAA will oppose the claim of "Warner Records" for a Tribunal-designated share of the Phase I award to Program Suppliers for the video elements only of "Music Videos."

It should be noted at the outset that the Tribunal's Phase I award to the Music Claimants category (ASCAP, BMI, et al) includes compensation for the music elements in "Music Videos."

It is our contention that any additional compensation to "Warner Records" should be sought from the producers/distributors of syndicated series and specials which use "Music Videos" as program elements, in accordance with the contractual provisions in the license agreements entered into between "Warner Records" and the producers/distributors of these syndicated series and specials. Furthermore, "Warner Records" may be entitled to seek a share of the royalties distributed to Broadcaster claimants for local programs to which "Music Videos" were licensed, again as a matter of contract between the parties. That is not, however, an issue in the Phase II Program Suppliers category hearing.

Whether the non-music elements of "Music Videos" are of value in syndicated series and specials which utilize "Music Videos" and what their value may be appropriately judgments to be

made in negotiations between the producers/distributors and the licensors, and not the Tribunal.

With respect to MPAA-represented claimants of any of the syndicated programs for which data have been provided, it is our obligation per the agreement executed between the claimant and MPAA to allocate a share of the Program Supplier award to that claimant in direct relation to each program's share of total viewing hours in all MPAA-represented claimant viewing hours. We have no way to identify the specific "Music Videos" (if any) utilized by the producers/distributors of these programs, or the extent to which any "Music Videos" were supplied by "Warner Records." In addition, the Tribunal treated "Music Videos" as a "new concept in programming" in its 1983 Decision, 51 Fed. Reg. 12792, 12812, without differentiating between the music and separate audio-visual components.

In summary, it is our contention that there is no requirement for the Tribunal to become involved in questions between producers/distributors of syndicated programs and other parties who license the producers/distributors to utilize "Music Videos" as components of these programs. Compensation to the suppliers will be determined by the licensing agreements, on the basis of private negotiations between the parties. If these parties fail to resolve any dispute, this is a matter of contract law, to be adjudicated by tribunals other than the Copyright Royalty Tribunal.

In determining whether the non-music element of "Music Videos" should receive any award, the Tribunal should be cognizant of the fact that "Warner Records" and others generally license their "Music Videos" to producers/distributors of syndicated series and specials and to individual broadcasters free of any license fee. In addition to the cost of producing "Music Video," it is our understanding that "Warner Records" and others use various means to encourage the widest exposure of their "Music Videos" to promote the sale of records to viewers. Thus additional exposure via retransmission by cable systems is of benefit to "Warner Records," without a scintilla of harm. To the extent that producers/distributors of syndicated series and specials utilizing "Music Videos" obtain a benefit from using these "clips" as components of their programs, they are the proper parties from whom "Warner Records" should seek compensation as provided in their private licensing agreements.